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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/580,527	06/11/2007	Chris Henri	505525	4329

53609 7590 01/23/2009
REINHART BOERNER VAN DEUREN P.C.
2215 PERRYGREEN WAY
ROCKFORD, IL 61107

EXAMINER

GRAHAM, MARK S

ART UNIT	PAPER NUMBER
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3711

NOTIFICATION DATE	DELIVERY MODE
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01/23/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

RockMail@reinhardtllaw.com

Office Action Summary	Application No. 10/580,527	Applicant(s) HENRI, CHRIS	
	Examiner Mark S. Graham	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 8-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5 is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-16 and 18-23 is/are rejected.
- 7) ☒ Claim(s) 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 23, "the non-linear tapered section" lacks antecedent basis leaving the intent of the claim unclear.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 8, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Borsdorf.

Borsdorf's cue with its more tapered tip portion transitioning non-linearly into a less tapered portion meets the limitations of the claims.

Claims 1, 2, 4, 8, 10, 11, 12, 14, 16, 18-21 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by McCarty '051 (McCarty). McCarty's cue with its thinned flexible tip section tapering non-linearly and concavely into a thickened rearward section meets the limitations of the claims. As noted by McCarty at Col. 4, line 16, the non-linear tapered section extends until about 14 inches from the tip end. McCarty's concave tapered section may be considered proximate the tip end as required by claim 14.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 9, 13, 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCarty.

McCarty does not disclose the length of his concave taper. However, it would have been obvious to one of ordinary skill in the art that it would have had to have been on the order of inches to properly construct a full length cue with smooth transitions as shown by McCarty. Regarding the wood limitation note that McCarty's shaft may include wood.

Concerning claims 3 and 13, McCarty does not disclose the exact rearward extent of the non-linear tapering starting at point 28. However, the exact distance of this tapering would obviously have been dependent on the particular length and feel characteristics desired by the player in the cue.

Applicant's arguments with respect to claims 1-4, 8-16, and 18-23 have been considered but are moot in view of the new ground(s) of rejection.

Claim 17 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 5 is allowed.

Any inquiry concerning this communication should be directed to Mark S. Graham at telephone number 571-272-4410.

MSG
1/15/09

/Mark S. Graham/
Primary Examiner, Art Unit 3711